

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 669 of 1991

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

J.G.BACHOTAR, SUPDT.OF CUSTOMS

Versus

DOSTMAHMAD AMAD SUMRA & 2

Appearance:

PETITIONER SERVED
MR SH SANJANWALA for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 3

CORAM : THE ACTING CJ R.A.MEHTA and
MR.JUSTICE J.M.PANCHAL

Date of decision: 11/04/97

ORAL JUDGEMENT

1. Both the accused-respondents have been convicted in this criminal appeal for an offence punishable under section 135 of the Customs Act and their acquittal by the trial court has been reversed. Hence, both the accused

were issued notices of hearing on the question of sentence. Both the accused have filed affidavits and accused no.1-Dost Mahmad is present in person. As regards accused no.2, at his request, we have heard his learned Counsel and considered the affidavit filed on the question of sentence.

2. Section 135 of the Customs Act provides that if any person is concerned in carrying or in any manner dealing with goods which he knows or reason to believe are liable to confiscation, he shall be punishable in the case of an offence relating to goods to which section 123 applies and the market price whereof exceeds Rs. 1 lac, with imprisonment for a term which may extend to five years and with fine. It is also provided that in absence of special and adequate reasons to the contrary to be recorded in the judgment by the Court, such imprisonment shall not be less than one year (at the relevant time). Sub-section (3) declares that the first offence, or confiscation, penalty and not being a principal offender or the age of the accused are not special and adequate reasons.

3. The learned Counsel for the accused has submitted that this is not a case for imposing minimum sentence of one year, having regard to the advanced age, poor health, penalty and most importantly the lapse of time of 12 years from the date of the incident. Reliance is placed on the judgment of the Supreme Court in the case of Inder Vs. State of Maharashtra, AIR 1980 SC 311 and Rohit K.Mehra Vs. State of Gujarat, 1994 SCC (Cr) 155.

4. On the other hand, the learned Counsel for the State and Customs Authority have submitted that having regard to the value of the smuggled goods namely 27 lacs and the conduct of the accused as found in this case, this is not a case for awarding less than minimum sentence and it is submitted that the legislature has provided for sentence upto 5 years and fine and, therefore, the Court may consider any reasonable sentence between the maximum and minimum provided by law. They have relied upon the judgment of the Supreme Court in the case of Devchand K.Tandel Vs. State of Gujarat, AIR 1996 SC 2787.

5. In the two judgments relied upon by the accused, a view has been taken with regard to the lapse of time which can be a special reason for awarding lesser sentence in the facts and circumstances of the case, in both the cases. In Rohit Kumar's case, the accused was an young boy of 19 years at the time of commission of

offence. He had undergone some substantial sentence; and a fine of Rs. 1500/- was enhanced to Rs. 25000/- on each count and failing the payment of fine, the Supreme Court provided for imprisonment of one year and three months on each count. In this case, the Supreme Court has followed the earlier judgment in the case of Inder (supra). In that case also, the facts are not mentioned and the gravity is also not shown, but the sentence of two years and fine of Rs. 2000/- was reduced to fine of Rs.15000/- on each count and total being Rs. 30,000/and in default, imprisonment of six months on each count. This was also in the light of the sentence already undergone.

In the present case, the accused have not undergone any sentence.

6. In the latest case decided by the Supreme Court in the case of Devchand K.Tandel (supra), in para 11, the Supreme Court considered the question of lapse of about 13 years time between the occurrence and the date of the judgment. It was also pointed out that the accused had already served major part of the sentence. The Supreme Court observed as under:-

"We do not think that in such economic offences, the courts should take any lenient view in the matter. Smuggling has become a threat to the effective fulfilment of the objectives of foreign trade control. The extent of the leakage of revenue that takes place through the process of tax evasion cannot be estimated. It has got serious deleterious effect on legitimate trade. Taxation Enquiry Commission had suggested that stringent measures both legal and administrative should be adopted to minimise the scope of the evil. For the purpose of achieving the desired objective Parliament came forward with insertion of Section 138-A into the statute book. Question of taking a lenient view of the matter, therefore, does not arise. In view of large scale smuggling activities in the border area and large scale evasion of duty the country has faced severe economic imbalance. Notwithstanding stringent legislation having been made it has not been possible to eradicate the evil. Any leniency, therefore, in economic offences will send a wrong signal. In this view of the matter, we are unable to accept the last contention of Mr.K.Madhava Reddy, the learned senior counsel for the appellants. "

7. The learned Counsel for the appellants has further submitted that in view of the liberalisation of economic policies, a lenient view be taken.

Having considered the submissions and the affidavits, we are of the opinion that the magnitude of the offence of carrying and transporting contraband goods of Rs. 27 lacs is serious enough for not awarding any sentence less than the minimum. Really speaking, the question that has to be considered in such a case is why the Court should not impose more sentence because the law at that time provided for maximum sentence of five years. However, in view of some of the circumstances relied upon by the accused, the Court may not impose sentence more than the minimum prescribed, but we do not find that there is any special or adequate reason to award less than the minimum sentence.

8. In the result, we direct that each of the accused is sentenced to suffer rigorous imprisonment for a period of one year and a fine of Rs. 25000/-, in default, further rigorous imprisonment of six months.

At the request of the learned Counsel for the appellants, they are given time of three months to surrender and also to approach the Supreme Court and obtain orders within that time. Accused to furnish surety in the sum of Rs. 5000/- each within 15 days from today. If such surety are not furnished, the order of sentence would become operative and would not remain in abeyance.
